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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,226	09/16/2003	John R. Bochringer	2003-166	2118
27569	7590	06/08/2007		
PAUL AND PAUL 2000 MARKET STREET SUITE 2900 PHILADELPHIA, PA 19103			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER
			NOTIFICATION DATE 06/08/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/663,226

Applicant(s)

BOEHRINGER ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-42 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-7 and 33, drawn to a medical device, classified in class 604, subclass 307.
- II. Claims 8-22, 34-37 and 40-42, drawn to a device and method for treating a wound, classified in class 604, subclass 305.
- III. Claims 23-29, 34 and 39, drawn to a device and method of controlling the direction of contraction of a wound, classified in class 604, subclass 313.
- IV. Claims 30-32, 34 and 38, drawn to a device and method of detecting a leak in a wound enclosure, classified in class 604, subclass 543.

Inventions I, II, III and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions are drawn to various methods of treating or sealing a wound site that are not capable of use together. The device of group I does not possess the suction means or associated airtight cover means necessary to perform the drainage process set forth in group II and cannot be used with the device of group II because use together would destroy the function of the device of group I because there is no means to apply suction thereto. The device of group I also does not possess the anisotropic means necessary to control the direction of contraction of a wound in response to suction, which the device of claim 1 also does not provide. Thus the device of group I cannot be used with the device of group III and cannot be used to perform the method of

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group III. The device of group I cannot be used to perform the method of group IV as it lacks the necessary leak-detection means, and therefore also cannot be used together with the device of claim IV as any leak would destroy the function of the device of group I. The device of group II has an openable and reclosable cover means that cannot be used in the devices and methods of groups III and IV, as none of the cover means in those devices are reclosable. The method of group II cannot be accomplished with the devices of groups III and IV, as those devices do not contain openable and reclosable cover means that would promote wound drainage by allowing improved access to suction. The method of group III could not be accomplished with the device of group IV, as such device does not contain the anisotropic wound packing necessary for controlling the contraction of the wound, which is the process of group III. Finally, the methods of groups II, III and IV cannot be performed together. The method of group II is directed to treatment of a wound by applying suction, whereas the method of group III treats a wound by controlling the direction of contraction and the method of group IV does not directly treat a wound, but rather is directed toward detecting a leak which could endanger the wound environment.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

In the event applicant elects to pursue the claim(s) of any of groups I-IV, the following election of species requirement applies:

This application contains claims directed to the following patentably distinct species: in groups I and IV: (1) the species of Figs. 1-4 and 9, (2) the species of Figs. 5, 5A; in group II: (3)

the species of Fig. 6 and (4) the species of Figs. 7,8. The species are independent or distinct because they are not capable of use together. Species (1) has a sealing means carrying a gap-filling means. Species (2) has a sealing means comprising a coating of adhesive and a release liner. The sealing means of species (3) is provided by the suction already present for drainage and healing of the wound. The sealing means of species (4) is a mechanical recloseable connection connecting the upper and lower layers of the enclosure. Each of these species have structurally different designs that would not permit the sealing means of the other species and therefore the means for sealing that each employs cannot be used with the devices of any of the other articles.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

A telephone call was not made to request an oral election to the above restriction requirement due to the complexity of the requirement.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

May 21, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

